

***D. GEORGE SWEIGERT  
GENERAL DELIVERY  
NEVADA CITY, CA 95959***

**April 20, 2021**

**District Judge Valerie E. Caproni  
U.S. District Court  
500 Pearl Street  
New York, New York 10007-1312**

**SUBJ: Request for interlocutory appeal of ORDER Dkt. 252  
1:18-cv-08653-VEC-SDA**

**Ref: (a) ECF doc. No. 239  
(b) New York State Civil Rights Law Sec. 76(a)(1)(a)  
(c) New York C.P.L.R. 3211(g)  
(d) ECF doc. No. 246  
(e) ECF doc. No. 252**

**Your Honor,**

- 1.** On November 10, 2020, Governor Cuomo signed into law an amendment to the New York anti-SLAPP law. In what appears to be the only case addressing the issue, on December 29, 2020.
- 2.** The Defendant in this action has filed an Anti-SLAPP motion, **ref: (a)**. The New York State Anti-SLAPP law requires an automatic stay of discovery when such a motion is filed; **ref: (b) and (c)**. Filing such a document stays all proceedings. The revised Anti-SLAPP statute provides that all “discovery, pending hearings and motions in the action shall be stayed upon the filing of” a motion to dismiss pursuant to the Anti-SLAPP law.
- 3.** S.D.N.Y. Judge Rakoff considered the application of the newly amended New York anti-SLAPP law. New York’s Anti-SLAPP law is operative in the S.D.N.Y. In *Palin v. New York Times Co.*, No. 17-CV-4853 (JSR), 2020 WL 7711593, at \*3 (S.D.N.Y. Dec. 29, 2020), the Court held:

It is undisputed that § 76-a requires public figures, like plaintiff, to prove actual malice by clear and convincing evidence. It is also undisputed (albeit by virtue of neither party having raised the issue) that a federal court sitting in diversity must apply § 76-a because it is a substantive, rather than a procedural, provision. See *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014) (affirming the district court's application of certain substantive provisions of Nevada's antiSLAPP law); see also *La Liberte v. Reid*, 966 F.3d 79, 86 n.3 (2d Cir. 2020) (distinguishing between the applicability in federal court of substantive and procedural elements of state anti-SLAPP laws).

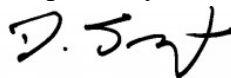
4. Therefore, the Magistrate Judge disregarded the practical effects on the judicial proceedings mandated by the docketing of the Anti-SLAPP motion, **ref: (a)**. Consequently, the issuance the Magistrate's MEMO ENDORSEMENT, **ref: (d)**, took place AFTER the filing of the Anti-SLAPP motion, **ref: (a)**, and is therefore invalid.

5. That MEMO, **ref: (d)**, was adjudged, considering the Anti-SLAPP motion (**ref: (a)**) and erroneously held that discovery deadlines for this lawsuit were still in effect ("The discovery deadlines in this action remain in effect" [**ref: (d)**]). The Plaintiff believes this decision is in error as **ref: (b)** declares an automatic stay of discovery and all proceedings.

6. The same is true for the Magistrate's ORDER, **ref: (e)**, which was inappropriately issued during the required "stay of proceedings" time-out period mandated by **ref: (b) and ref: (c)**.

7. The Plaintiff earnestly urges the District Judge to review the issue of the applicability of **ref: (b)** to these proceedings. The Plaintiff urges the District Judge to immediately issue a stay of proceedings until the matter of **ref: (b)** applicability is resolved. The Plaintiff urges the District Judge to invalidate **ref: (d) and ref: (e)**. In the alternative, the Plaintiff urges certification of the ORDER, **ref: (e)**, for interlocutory appeal.

Respectfully,



D. Geo. Sweigert

**D. GEORGE SWEIGERT**  
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**CERTIFICATE OF SERVICE**

The undersigned hereby attests under penalties of perjury that copies of this communication have been sent via electronic mail message to the following parties on the twentieth (4/20) day of April, two thousand and twenty-one (2021).

Clerk of the Court, Room 200 <a href="mailto:temporary_pro_se_filing@nysd.uscourts.gov">temporary_pro_se_filing@nysd.uscourts.gov</a>	Jason Goodman, CEO <a href="mailto:truth@crowdsourcethetruth.org">truth@crowdsourcethetruth.org</a>
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